UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW SILVA, Plaintiff, v. JOSEPH WOODS, Defendant.	Case No. C05-471-RSM-JPD REPORT AND RECOMMENDATION

I. INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff Matthew Silva is proceeding pro se and in forma pauperis in this 42 U.S.C. § 1983 civil rights action against defendant Joseph Woods, an officer with the Everett Police Department. This matter comes before the Court upon defendant's motion for summary judgment. Dkt. No. 55. Plaintiff has not filed an opposition to the motion. Having carefully considered defendant's motion, supporting materials, and balance of the record, I recommend that defendant's motion be GRANTED because defendant is entitled to qualified immunity.

II. FACTS AND PROCEDURAL HISTORY

During the early morning hours of March 22, 2002, defendant was on patrol in Everett, Washington, when he pulled behind a vehicle heading northbound on Lombard Avenue. Dkt. No. 57 at ¶ 2 and Ex. 1. At approximately 1:30 a.m., defendant used the

computer in his patrol car to search the Washington State Department of Licensing ("DOL") database for the vehicle's license plate number.[1] *Id.* The search revealed that the vehicle had been reported sold in October 2001, but that the new owner had not yet registered the certificate of ownership. *Id.* at ¶¶ 3-4 and Ex. 1. Because defendant knew that it is a misdemeanor not to transfer a vehicle's certificate of ownership within forty-five days of sale, he initiated a traffic stop. *Id.* at ¶ 3 and Ex. 1; Rev. Code Wash. § 46.12.101(6).

After being pulled over, plaintiff told defendant that his name was "Mark Lewis" and explained that he had purchased the vehicle a week earlier from a friend. Dkt. No. 57 at Ex. 1. Defendant ran the name "Mark Lewis" through the Washington Criminal Information System database, but found no information. *Id.* He did, however, determine that "Mark Lewis" was an alias used by plaintiff and that the personal information and physical descriptions of "Mark Lewis" and plaintiff were nearly identical.[2] *Id.* Defendant also discovered an outstanding felony warrant for plaintiff's arrest.[3] *Id.* at ¶ 5 and Ex. 2.

After discovering the warrant, defendant performed a search incident to arrest in which he discovered a small piece of plastic in plaintiff's pocket that contained what was later verified to be cocaine. Dkt. No. 57 at Ex. 1. The search also revealed a second piece of plastic near the front seat of plaintiff's car that contained cocaine. *Id.* Plaintiff was arrested, read his *Miranda* rights, and charged in Snohomish County Superior Court with possession of

---

[1]The DOL did not retain a record of defendant's computer search, but defendant "distinctly remember[s] running [the search.]" Dkt. No. 57 at ¶4.

[2]Upon being confronted with this information, plaintiff admitted his true identity. *Id.* at ¶ 5 and Ex. 2

[3]On March 13, 2002, Snohomish County Superior Court Judge Linda C. Krese issued a felony warrant for the arrest of plaintiff Matthew Silva. Dkt. No. 57 at Ex. 2. Plaintiff had failed to appear on two charges of second degree possession of stolen property, one charge of second degree theft, and two charges of forgery. *Id.*

a controlled substance.[4] *Id.* The charges were later dismissed.

On April 14, 20005, plaintiff filed this 42 U.S.C. § 1983 civil rights suit alleging that defendant's search violated his Fourth Amendment Rights. Dkt. No. 6. He seeks compensatory and punitive damages for the alleged violation. Defendant has moved for summary judgment. Dkt. No. 55. Defendant argues that he is entitled to qualified immunity because his search of defendant was consistent with the Fourth Amendment.[5] Plaintiff has filed no opposition to summary judgment.

III. QUALIFIED IMMUNITY STANDARD

Public officials who perform discretionary functions enjoy qualified immunity in a civil action for damages, provided that his or her conduct "does not violate clearly established federal statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Thus, qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Burns v. Reed*, 500 U.S. 478, 480 (1991) (internal citations and quotations omitted).

In order to determine whether a defendant is entitled to qualified immunity, the Court must conduct a two-step analysis. First, it must determine whether the facts, when taken in the light most favorable to the plaintiff, demonstrate that the defendant's conduct violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Mena v. City of Simi Valley*, 226 F.3d 1031, 1036 (9th Cir. 2000). This first prong of the qualified immunity analysis "mirrors the substantive summary judgment decision on the merits." *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002).

---

[4]Plaintiff later stated to defendant that he had attempted to sniff all of the drugs before his arrest, but that he was unable to do so. Dkt. No. 57 at Ex. 1.

[5]Out of an apparent abundance of caution, defendant also addresses plaintiff's potential State law claims. Dkt. No. 55. Plaintiff's complaint, however, states only a claim for relief under 42 U.S.C. §1983. It makes no reference to the Washington Constitution, statutes, or cases. The Court therefore declines to analyze potential State law claims.

If a violation is alleged, the Court must determine whether that constitutional right was clearly established at the time of the alleged violation. *Saucier,* 533 U.S. at 201; *Mena*, 226 F.3d at 1036. The second step requires the Court to determine "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004) (per curiam) (internal citation and quotation omitted). The plaintiff bears the burden of showing that the right at issue was clearly established. *Sorrels*, 290 F.3d at 969.

IV. ANALYSIS

The Fourth Amendment's prohibition against unreasonable searches and seizures extends to "brief investigatory stops of persons and vehicles that fall short of traditional arrest." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal citations omitted). Before a police officer can conduct such a stop, he must have a reasonable suspicion "that criminal activity may be afoot." *Id*. (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). An officer can form reasonable suspicion based on specific, articulable facts and reasonable inferences based on his experience. *United States v. Lopez-Soto*, 205 F.3d 1101, 1104-05 (9th Cir. 2000) (internal citations and quotations omitted). A police officer who observes a traffic violation has a reasonable suspicion to conduct a stop, regardless of his subjective intent. *Whren v. United States*, 517 U.S. 806, 810, 813 (1996); *United States v. Willis*, 431 F.3d 709, 715-16 (9th Cir. 2005). Once an officer initiates a traffic stop, he may conduct a brief search of the person and vehicle in order to ensure that the situation remains safe. *Willis*, 431 F.3d at 717 (internal citations and quotations omitted).

Plaintiff has adduced few facts that suggest defendant violated his civil rights. His complaint alleges that defendant stopped him because he was "driving a piece-of-crap car in a high-crime area in the middle of the night" and that the stop was therefore conducted "without any lawful basis." Dkt. No. 6. If these were the only facts before the Court, the complaint could state a violation of plaintiff's Fourth Amendment rights.

Defendant, however, has submitted a declaration in support of summary judgment that states he stopped plaintiff because of a suspected violation of a state traffic law. Defendant's declaration and the relevant police report state that he conducted a DOL search that revealed plaintiff had failed to timely transfer his vehicle's certificate of ownership. This information provided defendant with the reasonable suspicion necessary to initiate a lawful traffic stop. *Whren,* 517 U.S. at 810; *Willis*, 431 F.3d at 715-16. Hence, when viewing all of the available facts in a light most favorable to plaintiff, he does not state a violation of his Fourth Amendment rights.

Even if the Court were to conclude that plaintiff has adequately alleged that the traffic stop violated his Fourth Amendment rights, defendant's actions cannot be considered unreasonable in light of clearly established law. To the contrary, Section 46.12.101(6)(e) of the Revised Code of Washington makes it a misdemeanor for a vehicle owner to fail to transfer a vehicle's certificate of ownership within forty-five days of the vehicle's sale. In light of this statute, and *Whren*, *Lopez-Soto*, and *Willis*, *supra*, it was reasonable for defendant to believe that plaintiff had violated the law and that he had the reasonable suspicion necessary to initiate the traffic stop.

The Washington Supreme Court held in 2004 that a suspected violation of Section 46.12.101 is not an "ongoing offense" sufficient to support a traffic stop. *State v. Green*, 150 Wn.2d 740, 82 P.3d 239 (2004) (per curiam). However, the events at issue here occurred approximately two years before that decision. The date for determining whether the defendant's actions were reasonable in light of clearly established law is the date of the incident at issue. *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (noting that the reasonableness of a defendant's conduct must be "judged against the backdrop of the law at the time of the conduct").

Moreover, the outstanding felony warrant provided an adequate basis for defendant's search and ultimate arrest of plaintiff. Plaintiff does not dispute that the warrant used here

was a valid basis for his arrest. Police officers may search an arrestee's person and the passenger compartment of their vehicle pursuant to a lawful arrest. *New York v. Belton*, 453 U.S. 454, 460 (1981). The drugs found pursuant to the searches were in plaintiff's pocket and near the driver's seat, respectively. Dkt. No. 57 at Ex. 1. These searches were not overly intrusive. Hence, the limited searches incident to arrest conducted by defendant were reasonable given the circumstances.

V. CONCLUSION

For the reasons set forth above, I recommend that defendant's motion for summary judgment be GRANTED and that this case be dismissed with prejudice. A proposed order accompanies this report and recommendation.

DATED this 21st day of August, 2006.

James P. Donohue

JAMES P. DONOHUE
United States Magistrate Judge